SBCivil Writ Petition No.3066/2005

Ragga Ram
Vs.
State of Rajasthan & Ors.

Date of Order :: 07.08.06

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Moti Singh for Mr. Shambhoo Singh, for the petitioner.
Mr. Shyam Ladrecha, Additional Government Advocate.

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By an order dated 22.12.1987, passed by Vikas Adhikari, Panchayat Samiti, Sheoganj, appointment was given to the petitioner under Rajasthan Panchayat Samitis & Zila Parishads Service Rules, 1959 (hereinafter referred to as “the Rules of 1959”) as primary school teacher on temporary basis for a period of six months or till availability of selected incumbents, whichever is earlier. Under an advertisement No.1/88 issued by District Establishment Committee, Zila Parishad, Sirohi regular selection proceedings were conducted for the purpose of appointment as primary school teacher and the petitioner being selected therein was appointed consequent thereto as primary school teacher under an order dated 15.11.1988 and posting was given to the petitioner in pursuant thereto by the order dated 6.12.1988. The appointment of the petitioner was on

probation for a period of two years, the same was confirmed w.e.f. 25.1.1991.

A seniority list of the teachers working in District Sirohi was issued by the District Education Officer (Secondary), Sirohi wherein name of the petitioner is shown at Serial No.1322 with seniority No.2115. The seniority of the petitioner is reckoned in the cadre of teachers w.e.f. 15.11.1988 i.e. the date on which the petitioner was selected for appointment as teacher in pursuant to advertisement No.1/88. The grievance of the petitioner is that his seniority is required to be reckoned from the date he was temporarily employed by the Panchayat Samiti Sheoganj (District Sirohi) in temporary capacity i.e. 22.12.1987.

The contention of counsel for the petitioner is that the appointment of the petitioner was made in temporary capacity against a substantive vacancy, therefore, on regularisation of services the seniority is required to be reckoned from the date of appointment and in present case it is 22.12.1987. To substantiate the contention, counsel for the petitioner has placed reliance upon a judgment of Hon'ble Supreme Court in the case of Dr. Chandra Prakash and others v. State of U.P. and another, reported in (2002)10 SCC 710.

In the case of Dr. Chandra Prakash (supra) Hon'ble Supreme Court while dealing with issue with regard to determination of seniority under U.P. Medical Services (Men's Branch) Rules, held as under:-

> “41.As far as the question of seniority is concerned, Rule 18 of the 1945 Rules reads as follows:
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> “Seniority.--Seniority in the service shall be determined by the date of the order of appointment in a substantive vacancy provided that if two or more candidates are appointed on the same date their seniority shall be determined according to the order in which their names are mentioned in the order of appointment.”
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> 42.Thus even under the Medical Service Rules, 1945, the determination of seniority under those Rules was from the date of appointment against a substantive vacancy. It is clear that in accordance with the Rules, and as held by the High Court in Mathur case appointment could be temporary or permanent. But where the appointment is against a substantive vacancy, the year of appointment was determinative in fixing seniority under the Rules. On this basis, calculations of the writ petitioners' seniority from the date of their initial appointment cannot be said to be incorrect. Furthermore, it has not been disputed that the writ petitioners have been continuing to serve and had till 1983 enjoyed all the benefits of regular service since their initial appointments like the writ petitioners in Mathur case. As held in Rudra

Kumar Sain v. Union of India, SCC at p.45, para 20:

"20.In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be 'stopgap or fortuitous or purely ad hoc'."

43.The writ petitioners cannot, for all these reasons, be treated as "ad hoc appointees" who were to be regularised by appointment after selection and a period of probation under the 1979 Rules nor can it be said that the decision in H.C.Mathur case misconstrued the provisions of the 1979 Rules so as to exclude temporary appointees like the writ petitioners from its application."

Heard counsel for the parties.

The appointment of the petitioner in temporary capacity as well as in substantive capacity was made under the Rules of 1959. Under the said Rules temporary appointments could be made in accordance with Rule 23 in the event of non availability of regularly selected incumbents, however, such

appointment in any event could not be allowed to continue beyond the period of 12 months without prior concurrence of selection commission constituted under Section 86(6) of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959. The direct recruitment to the post of primary school teacher under the Rules of 1959 was required to be made by adhering the procedure prescribed under Rule 15 to Rule 19. The appointment to the petitioner was given at first instance on temporary basis under Rule 23 of the Rules of 1959 and thereafter he faced selection proceedings in accordance with the procedure prescribed under Rule 15 to 19 of the said Rules for direct recruitment and was employed as primary school teacher in substantive capacity as a consequent to his selection w.e.f. 22.11.1988.

The “seniority” under the Rules of 1959 is required to be reckoned in accordance with Rule 24, that reads as under:-

> 24.Seniority.-- Seniority in each grade or category shall be determined by the date of the order of substantive appointment to a post in that grade or category:”

According to Rule 24 of the Rules of 1959 the seniority is required to be reckoned from the date of substantive appointment. In the instant matter the appointment of the petitioner in substantive capacity

was made after holding selection proceedings under advertisement No.1/88 w.e.f. 15.11.1988. The seniority of the petitioner, therefore, in accordance with Rule 24 of the Rules of 1959 is rightly reckoned by the respondents from the date of his substantive appointment. The ratio of the judgment of Hon'ble Supreme Court in the case of Dr. Chandra Prakash (supra) is having no application in present controversy for the reason that the seniority in U.P. Medical Services (Men's Branch) is to be determined by taking into consideration the date of order of appointment in substantive vacancy. A temporary appointment can be against a substantive vacancy but that cannot be the substantive appointment. Under the Rules of 1959 the term prescribed for determining seniority is substantive appointment and not the appointment against the substantive vacancy. The petitioner may had been working against the substantive vacancy but his appointment was not at all in substantive capacity under the order dated 22.12.1987, passed by Vikas Adhikari, Panchayat Samiti, Sheoganj.

It is further relevant to note that the contention of counsel for the petitioner that services of the petitioner stood regularised after his temporary appointment is factually incorrect. As a matter of fact the petitioner faced selection proceedings under the advertisement No.1/88 issued by

the District Establishment Committee, Sirohi and an appointment was given to him in accordance with Rule 19 of the Rules of 1959. The case of the petitioner, therefore, is of not of regularisation but of fresh regular appointment. In view of it the contention of counsel for the petitioner that seniority of the petitioner is required to be reckoned from the date of his temporary appointment as it followed by regularisation in services, is also misconceived.

For the reasons mentioned above, I am of the considered opinion that the respondents rightly reckoned seniority of the petitioner from the date of his substantive appointment and, therefore, the writ petition is devoid of merit, hence the same is dismissed with no order to cost.

(GOVIND MATHUR),J.

kkm/ps.